



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 10, 1996

Mr. Hugh W. Davis Jr.
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102-6311

OR96-2343

Dear Mr. Davis:

You seek reconsideration of Open Records Letter No. 96-1658 (1996), in which this office concluded: 1) in cases in which a police department takes disciplinary action against a police officer, records relating to the investigation and disciplinary action must be transferred to the civil service commission pursuant to section 143.089(a)(2) of the Local Government Code and may not be withheld from disclosure under section 552.101 of the Government Code, and 2) where no criminal investigation or prosecution results from an investigation of a police officer for alleged misconduct, the city may not withhold the files from public disclosure based on section 552.108 of the Government Code. Your request for reconsideration was assigned ID# 102540.

In particular, you ask us to reconsider our ruling regarding the release of a police department's files maintained under section 143.089(g). We concluded that because the representative sample of files you submitted are of internal investigations that resulted in disciplinary action, they should have been transferred to the civil service commission pursuant to section 143.089(a)(2) and may not be withheld from disclosure under section 552.101. We further concluded that because the submitted files did not involve an investigation that resulted in a criminal prosecution, the city may not withhold these files from disclosure based on section 552.108. In your request for reconsideration, you state that the departmental files are files maintained in accordance with section 143.089(g), and that the city is in compliance with section 143.089(a)(2) and (f). You are concerned that this office may be construing section 143.089(g) files to be section 143.089(f) files which are, therefore, public.

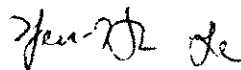
Pursuant to section 143.089(g), a police department may not release any information contained in the department's internal personnel files to any person requesting information.

Thus, the department must withhold section 143.089(g) files from disclosure under section 552.101. However, the department shall refer the person requesting information to the director of the civil service commission. Local Gov't Code § 143.089(g). Records, in a civil service commission personnel file, relating to an officer's misconduct which resulted in disciplinary action may not be withheld under section 552.101. Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990) at 6.

Lastly, personnel files, maintained by the civil service commission pursuant to section 143.089(a)(2), that do not involve an investigation resulting in a criminal prosecution, may not be withheld from disclosure based on section 552.108. Once again, while section 143.089(g) files must be withheld from public disclosure, the civil service commission may not rely on section 552.108 to withhold the submitted files, which should be in the commission's section 143.089(a)(2) files, because neither file involved an investigation that resulted in a criminal prosecution.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/rho

Ref.: ID# 102540

Enclosures: Submitted documents

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

cc: Ms. Ilorna Robinson-Holbert
African American Summit for Peace, Justice, and Equality
AAS Criminal Justice Committee
3620 Mountcastle
Fort Worth, Texas 76119
(w/o enclosures)